UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

1. LYNN ROBINSON, **2. JUDITH ROBINSON, and** **3. All Others Similarly Situated,** **Plaintiffs,** **v.** **1. AMERICAN AIRLINES, INC., d/b/a AMERICAN AIRLINES,** **Defendant.**	)	CIV-17-426-F

NOTICE OF REMOVAL

Please take notice that the Defendant American Airlines, Inc., d/b/a American Airlines (hereinafter, "American"), is entitled to have this action removed from the District Court of Oklahoma County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma, pursuant to 28 U.S.C. §§ 1441(a), 1446 & 1453, based upon the following:

I. SUMMARY OF PROCEEDINGS

1. American is the sole Defendant in an action filed in the District Court of Oklahoma County, State of Oklahoma, bearing the style *Lynn Robinson, Judith Robinson, and All Others Similarly Situated, Plaintiffs, vs. American Airlines, Inc., d/b/a American Airlines, Defendant,* and bearing Docket No. CJ-2017-1562 of that Court (hereinafter, the "removed action").

2. Plaintiffs commenced the removed action by filing their original Class Action Petition with the state court on March 15, 2017.

3. Plaintiffs filed their First Amended Class Action Petition with the state court on March 22, 2017.

4. Plaintiffs served American with their original Class Action Petition on March 16, 2017.

5. American entered its Special Appearance on April 4, 2017, reserving an additional twenty days or until Tuesday, April 25, 2017, within which to file its Answer or other response to Plaintiffs' Class Action Petition, and reserving its right to rely upon any defenses available to it, including those identified in 12 O.S. 2011, §2012(B).

6. Although Plaintiffs' state court pleading is stated to be a Class Action Petition, no class certification has been requested or obtained by Plaintiffs who specifically state:

> Plaintiffs do not intend to ask the Court to certify the class until any dispositive motion(s) filed by A[merican] A[irlines] is ruled upon and only if the ruling is in their favor.

Exhibit 1, Plaintiffs' First Amended Petition, ¶ 69, p. 19.

7. Plaintiffs purport to assert claims against American which they describe as being for Breach of Contract by Failure of Consideration, Breach of Contract by Failure to Fulfill Intentions Reasonable Expectations of the Parties, Recovery of Money Wrongfully Taken & Kept, Fraud and Tortious Breach of Covenant of Good Faith. Exhibit 1, Plaintiffs' First Amended Petition, ¶¶ 76-85, 88-95, 96-102, 103-109 & 110-116, pp. 22-30.

8. In February 2016, Plaintiffs purchased from American two non-refundable tickets for transportation. Exhibit 1, Plaintiffs' First Amended Petition, ¶ 7, p. 3. Plaintiffs' tickets were valid for one year and expired on February 22, 2017. Exhibit 1, Plaintiffs' First Amended Petition, ¶ 17, p. 5. Plaintiffs' original tickets were for passage to Paris on August 27, 2016, returning September 10, 2016; Plaintiffs cancelled these reservations. Exhibit 1, Plaintiffs' First Amended Petition, ¶¶ 7 & 10, p. 3. Plaintiffs later changed their tickets for passage from Dallas to Vancouver with the return to Dallas from Hawaii, which they also cancelled. Exhibit 1, Plaintiffs' First Amended Petition, ¶ 13, p. 4.

9. Plaintiffs admit they knew their tickets were non-refundable but allege they should have been allowed to use them to obtain passage even after the one-year period of validity expired. Exhibit 1, Plaintiffs' First Amended Petition, ¶¶ 11, 20, 23, 54, pp. 3, 5, 6, 14. They also allege that the change fee for the tickets from and back to Dallas was excessive from charges for taxes and fees should have been refunded. Exhibit 1, Plaintiffs' First Amended Petition, ¶¶2 5, 56(a), pp. 7, 14.

10. Based on their allegations, Plaintiffs seek relief, "on behalf of themselves and all members of the Class" they identify, in a variety of forms, including rescission of their contract with American, restoration of the amounts they paid to American, the benefit of their contract with American, compensatory damages, interest, costs, attorney fees and punitive damages. Exhibit 1, Plaintiffs' First Amended Petition, ¶¶ 78, 87, 95, 102, 109, 116, pp. 21, 23, 25-26, 27-28, 28-29, 30.

II. ALTERNATIVE BASES FOR REMOVAL JURISDICTION

A. Removal Based on Diversity Jurisdiction.

11. At the time this action was filed and at the present time, Plaintiffs were and are citizens and residents of the State of Oklahoma. *See* Exhibit 1, Plaintiff's First Amended Petition, ¶1, p. 1.

12. At the time this action was filed and at the present time, Defendant American was and is a corporation, incorporated under the laws of the State of Delaware, with its principal place of business in the State of Texas; American is not a citizen of Oklahoma and is completely diverse from both Plaintiffs. 28 U.S.C. §§1332(a)(1),(c)(1) & 1441.

13. Because American is not a citizen of Oklahoma, this action is properly removable by it. 28 U.S.C. §1441(b)(2).

14. Plaintiffs specifically allege that they seek recovery for "actual, compensatory, and punitive damages in an amount of money that will most likely exceed the amount required for diversity jurisdiction under § 1332 of Title 28 of the United States Code, plus interest, costs, expenses, attorney's fees, and any other relief the Court deems appropriate." *See* Exhibit 1, Plaintiffs' First Amended Petition, Prayer for Relief, p. 32.

15. Plaintiffs' allegation that their claim seeks recovery for an amount which will most likely exceed that required for diversity jurisdiction, establishes that an amount in excess of $75,000, exclusive of interest and cost, is at issue in this action satisfies the

jurisdictional requirement for removal pursuant to 28 U.S.C. §§1332(a), 1441(a) & 1446(c)(2).

16. Although Plaintiffs' state court pleading is stated to be a Class Action Petition, Plaintiffs have not requested class certification and specifically state they will not do so until after a dispositive motion has been presented and ruled upon by the Court. Exhibit 1, Plaintiffs' First Amended Petition, ¶ 69, p. 19. Accordingly, Plaintiffs' action is proceeding at present on their individual behalves and the provisions for the removal of class actions are not presently applicable. 28 U.S.C. §1453.

17. American was served with process March 16, 2017; this Notice of Removal is timely because it is filed within 30 days of service pursuant to 28 U.S.C. § 1446(b).

18. This action is properly removed to this Court because it was commenced in the District Court of Oklahoma County, State of Oklahoma, and therefore is within the judicial district for this Court. 28 U.S.C. §§ 116(c) & 1441(a).

19. This is the type of action over which the United States District Courts have original jurisdiction, there being diversity of citizenship between both Plaintiffs and the sole Defendant, and the jurisdictional amount being placed at issue by Plaintiffs' Prayer for Relief; accordingly, American has properly removed this action to this Court from the District Court of Oklahoma County, State of Oklahoma, pursuant to 28 U.S.C. §§ 1332(a)(1), 1441 & 1446.

B. Removal Based on Class Action Allegations

20. Plaintiffs indicate in the style of their state court pleadings that this action is brought, not only on their individual behalves, but also on behalf of "All Others Similarly Situated . . . ." Exhibit 1, Plaintiffs' First Amended Petition, p. 1.

21. Plaintiffs describe their requested class as "consisting of all persons and entities residing in and/or located in the State of Oklahoma, all other states of the United States, and all countries around the world" who purchased tickets for air transportation and paid Federal Transportation Taxes, 9/11 security fees and passenger facility charges, but did not receive refunds when the tickets were not used. Exhibit 1, Plaintiffs' First Amended Petition, ¶¶ 2, 70, pp. 1, 19.

22. Because American is not a citizen of Oklahoma and is completely diverse from both Plaintiffs, and because Plaintiffs allege that their proposed class would include "a citizen or subject of a foreign state," this Court would have original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A, B).

23. Plaintiffs allege that "[u]pon information and belief, there are thousands of members of the Class" which supports original jurisdiction in this Court pursuant to 28 U.S.C. § 1332(d)(5)(B). Exhibit 1, Plaintiffs' First Amended Petition, ¶ 73, pp. 19-20.

24. Plaintiffs allege "many, many millions of dollars" as the loss by members of their proposed class. Exhibit 1, Plaintiffs' First Amended Petition, ¶¶ 27, 73, pp. 7, 19-20.

25. If only 67 members of Plaintiffs' requested class seek damages in excess of $75,000, as requested by Plaintiffs, over Five Million Dollars ($5,000,000.00) would be at issue in this action as required by 28 U.S.C. § 1332(d)(2)(6). *See* Exhibit 1, Plaintiffs' First Amended Petition, Prayer for Relief, p. 32.

26. Plaintiffs allege they paid $2,700.32, or $1,350.16 each for their tickets. *See*, Exhibit 1, Plaintiffs' First Amended Petition, ¶8, p. 3. If 3,704 members of their proposed class with "thousands of members" have claims for that amount or more, over Five Million Dollars ($5,000,000.00) would be at issue in this action as required by 28 U.S.C. § 1332(d)(2)(6).

27. This is the type of action over which the United States District Courts have original jurisdiction, there being diversity of citizenship between both Plaintiffs and the sole Defendant, there allegedly being thousands of members of the proposed class and the jurisdictional amount being demonstrably placed at issue by Plaintiffs' allegations; accordingly, American has properly removed this action to this Court from the District Court of Oklahoma County, State of Oklahoma, pursuant to 28 U.S.C. §§ 1332(d)(2), 1446 & 1453.

III. ADDITIONAL PROCEDURAL MATTERS REGARDING REMOVAL

28. Copies of all process, pleadings, and orders served upon Defendant, American Airlines, in the removed state court action as well as a copy of the docket sheet for that Court are attached pursuant to 28 U.S.C. § 1441(a).

Exhibit1, First Amended Class Action Petition, filed March 22, 2017;

Exhibit 2, Class Action Petition, filed March 15, 2017;

Exhibit 3, Exhibit A to Class Action Petition, American Airlines' Conditions of Carriage, filed March 15, 2017;

Exhibit 4, Service of Process on American Airlines, March 16, 2017, including Summons, Petition, and attachment;

Exhibit 5, Defendant's Entry of Special Appearance and Reservation of Additional Time, filed April 4, 2017;

Exhibit 6, Docket Report, *Robinson v. American Airlines*, District Court for Oklahoma County, Case No. CJ-2017-1562; and

Exhibit 7, Civil Cover Sheet.

29. This Notice of Removal is being served this date on Plaintiffs' counsel of record pursuant to 28 U.S.C. § 1441(d).

30. A true and correct copy of this Notice of Removal is being filed this date with the Clerk of the District Court of Oklahoma County, State of Oklahoma pursuant to 28 U.S.C. § 1441(d).

WHEREFORE, PREMISES CONSIDERED, the Defendant, American Airlines, Inc., d/b/a American Airlines, hereby removes this action from the District Court of Oklahoma County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma, pursuant to 28 U.S.C. §§ 1441(a), 1446 & 1453.

Respectfully submitted,

SECREST, HILL, BUTLER & SECREST

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AMERICAN AIRLINES, INC.

CERTIFICATE OF MAILING

I hereby certify that on April 13, 2017, I electronically transmitted the Notice of Removal to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Jeffrey Martin jm8069337@aol.com

I hereby certify that on April 13, 2017, I have mailed the foregoing by first class mail, postage pre-paid to the following:

Court Clerk
District Court of Oklahoma County
State of Oklahoma
320 Robert S. Kerr Avenue,
409 County Office Bldg.
Oklahoma City, Oklahoma 73102

s/ Edward J. Main